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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 468

BENJAMIN D. RITHOLZ,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent

PETITIONER'S REPLY TO RESPONDENT'S BRIEF

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There are several matters raised in respondent's brief which require reply.

1. Respondent asserts that on August 3, 1955, Feiler told the State police and the Assistant Attorney General, "• • • that Ritholz expressed a desire to come to Michigan to offer a bribe. • • •" (Resp. Br. p. 11.)

This assertion would be important if true. It is not true, and the record page (208a) cited by respondent to support the assertion, fails to bear it out.

2. Respondent asserts that petitioner "on cross-examination admitted the bribery of the state officials (505a to 591a)" (Resp. Br. p. 20). This assertion is also untrue. Petitioner admitted making the payments to the Board members. He did not testify that these payments constituted bribery.

But even if bribery had been admitted, if it resulted from entrapment, petitioner could not be constitutionally convicted.

> "The Courts refuse to convict an entrapped defendant, not because his conduct falls outside the proscription of the statute, but because, *even if his guilt be admitted*, the methods employed on behalf of the government to bring about conviction cannot be countenanced." (Emphasis supplied.) *Sherman v. United States*, 356 U. S. 369, concurring opinion at p. 380.

Also see *United States v. Echols*, 253 Fed. 862 where the defendant was discharged after pleading guilty, and *United States v. Healy*, 202 Fed. 349 where sentence was set aside and the defendant discharged; in both cases the Court acted after it was shown that the defendant had been entrapped.

3. Respondent argues that petitioner did not raise the issue of denial of due process arising from entrapment in his brief in the Michigan Supreme Court, as a Federal issue (Resp. Br. p. 24). Petitioner has shown that he did properly raise the issue (Pet. for Cert. p. 14).

The concern of the Courts that the judicial process not be used to convict an entrapped person was expressed in the concurring opinions in the two leading cases in this Court.

In *Sherman v. United States*, 356 U. S. 386, the concurring opinion stated:

> "The protection of its functions and the preservation of its own temple belongs only to the Court. It is the province of the Court and the Court alone to protect itself and the government from such prostitution of the criminal law. The violation of the principles of justice by the entrapment of the unwary into crime *should be dealt with by the Court no matter by whom or at what stage of the proceedings the facts are brought to its attention.*" (Emphasis supplied, at p. 385.)

And in *Sorrells v. United States*, 287 U. S. 435, the concurring opinion stated:

> "Proof of entrapment AT ANY STAGE of the case, requires the Court to stop the prosecution, direct that the indictment be quashed, and the defendant set at liberty." (Emphasis supplied, at p. 457.)

Respectfully submitted,

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Dated: Detroit, Michigan,
November 7, 1960.